Global Immigration Trends

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Global Immigration Trends
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With You Today

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Discussion Topics
• Political, Economic, Social Trends
• US Highlights
• EU/ Europe Highlights
• CIS Countries- Trends and Policies
• Middle East & Africa- Current Environment
• ASEAN- Protectionism & Compliance
• Global Immigration Trends & Impact on US Employers
What Are Companies Concerned About?

- Attracting top talent in markets which do not easily facilitate the hiring of foreign nationals
- Risks associated with non-compliant business travelers/short-term assignees
  - Short-term assignments comprise most employment based immigration compliance violations
  - Need to minimize negative publicity and other resulting repercussions
  - Maintaining health and safety of employees
  - Accountability for monitoring employees deployed worldwide
  - Variable immigration requirements from country to country
    - Wide variance in definition of "work"
    - Application procedures vary country by country, consulate or even city to city
  - Unlawful failure to comply is generally actionable
  - Increased financial exposure due to sheer volume of employees
    - All of the above balanced against the pressures of the business
- Most companies are focused on the following:
  - Minimizing negative publicity
  - Employees being detained
  - Attracting top talent
  - Compliance concerns
  - Rapid deployment

Politics & Economy

Worldwide
- With increased focus on security, there continues to be an impact on immigration processing
  - The "on arrival" experience for international travelers
- Continued heightened focus on governmental compliance and corruption, particularly in some of the emerging markets, which can lead to changes in leadership within the authorities and dramatic shifts in policies and procedures
- Shifting diplomatic relationships have led to tensions related to immigration
- Increase in the use of technology for filing work authorization and business visitor applications

Politics & Economy - continued

Mature markets
- Where high unemployment continues to be a concern, compliance and worksite enforcement efforts continue to be a focus and immigration schemes are aimed at protecting the local workforce
  - Changes in process to make hiring of foreign nationals more difficult
  - Increases in compliance initiatives, with an emphasis continuing to be placed on the employer as well as the employee
  - Several jurisdictions have focused on Minimum Salary Levels (MSL)
Emerging markets
- Governments continue to recognize opportunities for growth and adjust policies accordingly
- Many adjusted their immigration schemes to allow for increased development
- Focus has been on building immigration infrastructure
- However, even the emerging markets are now looking to increased compliance
Social Trends & Outlook

- Increasing need for Rapid Deployment to meet business needs and employee expectations
- Continued increase in “off-shoring” and cross-border joint ventures
- Multinationals are organized more along business lines than geographic lines
- Global companies continue to promote short-term assignments to avoid overhead and tax costs associated with long-term assignments
- Increased focus in certain jurisdictions on perceived discriminatory hiring practices
- Related health and safety concerns
  - Work-related accident when not in possession of work authorization
  - Foreign nationals detained by authorities pending investigation for non-compliant activity
- Other factors continuing to impact mobility include
  - Dual-career issues
  - Career progression
  - Working remotely
  - Personal safety
  - Increased technology
  - Cost containment directives
  - Diversity issues

Trends in Global Immigration - Restrictive Practices

- Processing Time
- Corruption
- MSL
- Quotas/Ratios/LMT
- Certainty
- Documents
- Short Term Option
- Penalties
- Cost
- Employment/salary requirements

US Highlights – Business Visitors

- Nonimmigrant visa category for business visitors to the United States – B-1
- Appropriate for:
  - Attending meetings and conferences
  - Negotiating contracts
  - Conferring with business associates
  - Gathering information
- B-1 status does not confer authorization to work in the United States
  - Foreign national (FN) must not engage in productive employment
  - FN’s services cannot be billed to a client
US Highlights – Business Visitors

- FN must remain employed by the foreign employer
- FN’s activities in U.S. must benefit the foreign employer
- FN’s activities must be controlled by the foreign employer
- FN must remain on foreign payroll
  - Cannot receive compensation from a U.S. source EXCEPT for reasonable expenses, e.g., travel, meals, lodging
- FN must maintain foreign residence with no intent to abandon it
- Document by showing strong professional, familial, financial and other ties to home country

US Highlights – Business Visitors

- No USCIS petition needed; foreign national applies for visa at U.S. consulate
- Duration of B-1 stay:
  - 3-6 months is typical period granted, though border officers have wide discretion to grant shorter stays
  - stays of more than 2 weeks will generally face scrutiny
- Business Visitor Compliance is critical to U.S. company as government scrutiny on employer use of B-1 program increasing
  - Screen all business travelers, verify planned activities are appropriate, monitor actual activities while in U.S., and verify departure

US Highlights – Business Visitors

- Visa Waiver Program (VWP) allows visa-free entry for business/tourism stays of up to 90 days
- Available to nationals of 37 countries:
  - Andorra, Australia, Austria, Belgium, Brunei, China (beginning on May 1, 2014), the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan and the UK
- Foreign national needs advance online approval to travel
- FN’s passport must meet specific requirements:
  - E-passport – if passport issued on or after 10/26/06
- No extension of stay or change of status permitted
US Highlights – H-1B

- Record filings for FY 2016 H-1B cap
  - FY 2016 cap of 85,000 reached in five business days (April 1 – April 7)
  - Approximately 233,000 cap petitions received by USCIS
  - 60,000 more petitions than FY 2015 (up 35%)
  - Approximately 50,000 cases filed against cap exemption of 20,000 for holders of U.S. advanced degrees
  - 9,700 more petitions than FY 2015 (up 24%)
  - Odds of selection
    - Roughly 30% chance a case being chosen for processing against standard cap (down 12% from FY 2015)
    - Roughly 40% chance a case being chosen for processing against U.S. advanced degree cap
  - Overall chance of selection in FY 2016 was 36%

US Highlights – H-1B continued

- FY 2015 H-1B Cap RFE Trends
  - Continued high rates of requests for evidence (RFEs)
  - Agency taking stricter positions on:
    - Establishing whether position is a specialty occupation
    - Documenting an employer’s right to control beneficiary’s work/employer-employee relationship, especially for consulting positions
    - IT consulting positions
    - More frequently issued to the consulting industry
    - Documenting sufficient specialty occupation work for the beneficiary to cover the requested H-1B period
    - Maintaining nonimmigrant status, especially if beneficiary is in F-1 status and requesting a change of status to H-1B
- H-1B RFE Rates Rise
  - 25% H-1B RFE rate reported in June 2015 (Ombudsman)
  - Continued upward trend since 2010 at both Service Centers

H-1B Location Changes Under Simeio

- By regulation, an amended H-1B petition is required whenever there is a material change in H-1B worker’s employment
  - In Matter of Simeio Solutions, AAO ruled that a material change occurs when the H-1B employee moves to a new location outside of the geographic area of LCA that was filed with employee’s H-1B petition
  - Amendment not required for:
    - Moves to worksite within geographic area of LCA already on file with USCIS, provided no other material changes have occurred
    - Short-term placements or time spent at non-work locations, as those terms are defined by DOL
USCIS Guidance on H-1B Location Changes Under *Simeio*

- On May 21, 2015, USCIS issued a draft [policy memo](#) on H-1B location changes in the wake of *Matter of Simeio*
  - Under the draft guidance, employers have until January 15, 2016 to file amended petitions for H-1B employees who had already moved to new worksites not specified in an H-1B petition and labor condition application (LCA) on file for the employee for moves after April 9, 2015 and before August 19, 2015 (pre-April optional)
  - For any such relocations occurring after August 19, employers must obtain a new LCA and file an amended petition before the move takes place
  - The agency accepted comments on the draft guidance through June 26, 2015; changes could be announced
    - USCIS Director Leon Rodriguez acknowledged challenges posed by *Simeio* decision and guidance
    - USCIS is reportedly building in protections for employers who relied in good faith on *Hernandez* guidance
    - Few concrete details offered, though the Director suggested that there could be an extension of time to file amendments for pre-*Simeio* location changes, among other accommodations

US Highlights – L-1

- **L-1A RFEs**
  - L-1A RFE rate at CSC: 40% (down from 43% last year); 43% at VSC (up from 31% last year) [Ombudsman, June 2015]

- **L-1B RFEs**
  - Some 45% of all L-1Bs received an RFE and 35% were denied
    - L-1B RFE rate at CSC: 45% (down from 52% last year); 50% at VSC (up from 41% last year) [Ombudsman, June 2015]
  - Denials and RFEs rose as number of L-1B petition filings dropped
    - In FY 2012, some 18,735 L-1B petitions were filed at USCIS Service Centers
      - In FY 2014, that number fell to 14,515
    - For last three FYs, L-1B RFE rates have been about 45% on average, after a high of 63% in FY 2011
    - In FY 2014, L-1B RFE rate was 49% for initial L-1 petitions and 40% for extensions
    - In first two quarters of FY 2014, L-1B RFE rate: 50% at CSC; 56.7% at VSC
    - In FY 2013, L-1B RFE rate: 51.5% at CSC; 41.4% at VSC

US Highlights – L-1 continued

- **L-1B Denials**
  - L-1B denial rate in FY 2015 lower than in FY 2014, however, consistent with agency’s scrutiny of L-1B visa category
    - Q1: 27.3% denial rate
    - Q2: 28.1% denial rate
    - L-1B denial rate in FY 2014: 35%
      - Increased nearly sixfold since FY 2006, when just 6% of L-1B petitions were denied
      - In FY 2014, extensions had a higher rate of denial than initial petitions, 41 percent versus 32 percent for initial filings
      - Report also shows great disparity in rates of denial across beneficiary nationalities
        - 56% for beneficiaries from India; 22% for Chinese; 13%, on average, for all others
    - L-1 denial rates in FY 2013: 40% at CSC; 32% at VSC
    - L-1 denial rates in FY 2014 have slightly increased at both SCs
US Highlights – L-1 continued

- USCIS reaffirms that there are two kinds of specialized knowledge, either of which will qualify a beneficiary for the category
  - "Special" knowledge of employer’s product/service and its application in international markets
  - "Advanced" knowledge of employer’s processes/procedures
- Guidance confirms that L-1B beneficiary’s knowledge need not be "narrowly held" within petitioner’s organization
  - Refutes the position that agency adjudicators and consular officers have commonly taken in RFEs and denials
  - Gives officers authority to judge when employer has an actual need to transfer the beneficiary to the U.S., especially if others in the organization possess the same knowledge
- Guidance makes wages a factor, even though the L-1 category is not subject to specific salary requirements
  - Discrepancy between the L-1B beneficiary’s wages and those paid to employees in comparable positions could indicate that L-1B lacks the requisite knowledge to qualify

US Highlights – L-1 continued

Offsite placement of L-1B employees

- Client site placement of L-1B employees has been subject to additional scrutiny as a result of the L-1 Visa Reform Act
- New guidance reaffirms that L-1B employees may be placed at client sites, and offers clarity on compliance with the Act
- The Act requires petitioning employers to demonstrate that they, and not a third party, will primarily control an L-1B assigned to a client site
  - End clients not prohibited from assigning work to L-1Bs, provided petitioner retains principal authority over worker
- The Act mandates that an L-1B assigned to a client site must perform work that requires specialized knowledge of the petitioner’s own products and services
  - Knowledge of client’s systems can be considered along with, but not as a substitute for, the requisite knowledge of the petitioner’s products and services
  - It remains unclear how L-1B petitioners will be able to demonstrate that the services they provide to their customers are indeed their own

US Highlights – L-1 continued

Extensions and Amendments of L-1B status

- New guidance directs USCIS adjudicators to give deference to agency’s prior petition approvals when they review L-1B extensions
  - Adjudicators should not reevaluate a beneficiary’s eligibility for the L-1B classification when an employer applies to extend the validity of an individual petition that USCIS approved previously
  - Agency seems disinclined to extend deference to cases that are initially adjudicated by other U.S. government agencies or where end-client placement has changed
    - NAFTA L-1Bs adjudicated at U.S. border by CBP
    - Blanket L-1Bs adjudicated at U.S. consulates
    - Change in end-client placement may be deemed “material change” requiring additional agency review despite prior USCIS approval
- Agency suggested that changes to end client placements will be considered material and thus require an amended petition
EU/ Europe Highlights

- EU Blue Card
  - Blue Card is viewed by authorities as a substitute to their own national highly skilled work authorization permission
  - Slow adoption resulting from:
    - Lack of familiarity with the Blue Card Directive by national immigration authorities
    - Lack of promotion by the EU Commission
    - National authorities favoring their own highly skilled permission type

- Continued Focus on Compliance
  - Increase in salary thresholds to ensure local workers are not displaced by foreign workers (Germany, Belgium, Netherlands)
  - Increased audit and worksite inspections (Israel)
  - Technology is increasingly being used to link tax, social security, labor laws and immigration/visa compliance (Schengen, Ireland, UAE)
    - While technology may streamline processing, it will also improve government compliance and enforcement capabilities

EU/ Europe Highlights - continued

- Current Environment
  - Changes in leadership leading to a shift in immigration regulation (France, UK)
  - Adjudication continues to reflect current political climate (Russia)
  - However, Governments still recognize the need for businesses friendly regulations (Turkey, Estonia, Cyprus, Italy, UK/Ireland, Spain)

- EU Parliament and Commission
  - Commission has announced a review later in 2015 of visa requirements for entry to the Schengen region
  - EU Commission considering the implementation of single ICT Permit for member states
  - Proposals shared with EU Commission to create a touring visa for Artists
CIS Countries - Trends and Policies

- Shifting diplomatic relationships has led to immigration related tensions and an increase in nationalism
  - Nationalism reflected in immigration policies (Russia)
  - Requirement to complete language, history, and basics of legal knowledge test
  - Special immigration regime for Ukrainians
  - The volatile political situation has caused government closures, backlogs and delays (Ukraine)
- Increased focus on compliance and regulations to protect the local labor market (Russia, Kazakhstan)
- However, Governments are also recognizing opportunities for growth and are adjusting policies accordingly
  - Work permit application simplified (Ukraine)
  - Relaxation of Business Visas (Azerbaijan)
  - Expected implementation of pilot visa-free regime (Kazakhstan)

Lead Times – Middle East & Northern Africa

- Not every barrier is stated or acknowledged and this is a fast moving environment
  - Increased referral for detailed national security background checks
  - Possibility of basic indicators inadvertently catching innocent people
  - This trend does not only apply in the Middle East but also to anyone from the Middle East, or those with ties to the Middle East
  - Quotas and ratios remain a problem but are not influenced by the current conflict environment (Qatar, Saudi Arabia)
- Increased security concerns can be a driving force behind legislative changes and longer processing times
  - Kenya: Due to frequent terror attacks, the government has enhanced the security background checks for all foreigners applying for work authorization
  - Expected changes: Due to recent security law amendments by the Kenyan National assembly, Foreign Nationals will be required to apply for and get work authorization before entering Kenya
  - In-country change of status will not be allowed once and if these new laws are enforced

Middle East & Africa – Current Environment

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ASEAN - Protectionism & Compliance

Governments recognize opportunities for growth but there is still a movement toward heightened compliance and enforcement activity driven by politics and internal pressures (Indonesia)

Increased efforts to regulate and protect the local labor market
- Indonesia: Further restriction on job titles available to foreign nationals and complex corporate requirements
- Malaysia: Continued increase in salary thresholds to protect local labor markets

Enhanced compliance regimes
- Increased audit activities and stricter/adjudication standards (Indonesia, Philippines)
- Wider investigative powers to various government agencies and increased penalties (Singapore)

Tightening the requirements of the current immigration regime (Malaysia, Singapore, Philippines, Indonesia)

Global Immigration Trends & Impact on U.S. Employers

Unstable political environments, including tensions and current events impact visa processing and immigration legislation (Venezuela, Ukraine)
- Increased focus on security (Kenya)
- Continued use of Minimum Salary Level and other protectionist measures (Saudi Arabia)
- Changes in process to make hiring of foreign nationals more difficult (Singapore, India, Serbia, UK, Austria)
- Changes in governments may affect immigration legislation and adjudication (Brazil, Argentina, Mexico)

The worldwide recession continues to have an impact on the immigration landscape

In mature markets, particularly where high unemployment continues to be a concern, compliance and workplace enforcement efforts remain a focus and immigration schemes are aimed at protecting the local workforce
- Many jurisdictions have increased efforts to monitor and track foreign nationals through technology (Colombia, Malaysia, UAE)
- Increased audit and worksite inspections (Germany, Israel)
- Increased corporate and complex document requirements (China)
- Wider discretion in adjudication (Philippines)

However, governments still recognize the need for immigration schemes that allow for increased development
- Streamlined processes and reduction in processing times (Japan, India, Brazil, Mexico)
- Expansion of favored nationalities and options for short term work authorization
- Broadening of eligibility criteria for highly skilled employment permits (Ireland)
- Expansion of permissible business activities (Thailand)
- Governments continue to target highly skilled workers and investors (Hong Kong)
- Several countries have introduced or expanded their investor programs (Australia, Israel, Malta, Canada)
Final Thoughts

- Starting Hire/Transfer
  - Lead time
  - Qualifications
  - All country-specific
- Steps to Visa
  - Consular culture
- Steps to Entry
  - Border roadblocks
- After Entry
  - Position changes
  - Compliance concerns
- Long-Term Plans
  - Localization
  - Moving on